

In Re:

FRANCES HUERTA

Debtor(s).

**DEBTOR'S OPPOSITION TO MIDFIRST BANK'S
MOTION FOR RELIEF FROM AUTOMATIC STAY**

FRANCES HUERTA, Debtor, by and through her attorney of record, Boris Avramski, Esq., from Avramski Law, PC, files this opposition to MIDFIRST BANK’S, (hereinafter “Secured Creditor” or “Movant”), Motion for Relief from Automatic Stay on the following grounds:

**THE PROPERTY IS NECESSARY FOR THE
DEBTOR'S EFFECTIVE REHABILITATION
11. U.S.C. § 362 (d)(2)**

1. The real property subject to this motion and opposition thereto (hereinafter referred to as “Subject Property”) is held by the debtor as an investment property and it is currently generating rental income of \$1,150.00 per month. See Exhibit A, Rental Agreement.

2. The Subject Property's current market value is \$60,000.00 (Exhibit B, appraisal) and the Debtor has filed a motion to value collateral on November 30, 2009, with the intent to

1 cram down the mortgage loan note secured by the Subject Property. 11 U.S.C. § 506 allows for
2 partially secured claims to be bifurcated into secured and unsecured portions and 11 U.S.C. §
3 1322 (b)(2) allows debtors to modify the rights of secured creditors, other than the rights of
4 secured creditors secured only by a security interest in real property that is the debtor's primary
5 residence, under their Chapter 13 plan.

6 3. If successful on her motion to value collateral, the Subject Property will generate
7 income to the Debtor necessary for the Debtor's effective rehabilitation. Therefore, the Secured
8 Creditor is not entitled to relief from the automatic stay as provided in 11. U.S.C. § 362
9 (d)(2)(B), because the property is necessary for the Debtor's effective rehabilitation.

10 4. The Debtor's Chapter 13 plan provides for the prepetition arrearages in section
11 2.12.2 and for the treatment of the secured portion of the Secured Creditor's claim in section
12 2.13.1 of the plan. Exhibit C, Debtor's Chapter 13 Plan #2.

13 5. In addition, the Secured Creditor will benefit from the Debtor's proposed Chapter
14 13 Plan #2. If the automatic stay is lifted, allowing the Secured Creditor to pursue its remedies
15 under state law, the Secured Creditor will be subject to the fees and costs associated with
16 foreclosure and consequent sale of the Subject Property and it will recover less than full value.
17 Whereas, under the Debtor's Chapter 13 Plan #2, the Secured Creditor will recover the full
18 current market value of the Subject Property plus reasonable interest over five years.

19 WHEREFORE, the Debtor prays for relief as follows:

- 20 1. The Secured Creditor's Motion for Relief from the Automatic Stay be denied; and
21 2. For any other relief Your Honor finds appropriate.

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23 Dated this 8th day of December, 2009.

24 Respectfully submitted.

25
26 /s/BORIS AVRAMSKI, ESQ.
27 Boris Avramski, Esq.
28 Nevada Bar No. 11350
Attorney for debtor